

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL G. O'CONNELL,
Plaintiff,

v.

CIVIL ACTION NO.
10-10746-NMG

DEPARTMENT OF THE NAVY,
Defendant.

REPORT AND RECOMMENDATION RE:
UNITED STATES' MOTION TO DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION PURSUANT TO FED.R.CIV.P. 12(b)(1)
(DOCKET ENTRY # 10)

December 21, 2010

BOWLER, U.S.M.J.

Pending before this court is a motion to dismiss filed by the United States on behalf of defendant Department of the Navy ("the United States") pursuant to Rule 12(b)(1), Fed R. Civ. P. ("Rule 12(b)(1)"). (Docket Entry # 10). The United States argues that this action arises under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq. ("FTCA"), and that it is the proper party.¹ Acknowledging that the FTCA provides a limited waiver of

Having considered the plaintiff's objection thereto, (Docket No. 14)
The United States is correct. Because the claims sound in tort, the United States, as opposed to the Department of the Navy, is the proper party. A statute, "28 U.S.C. § 2679(a), withdraws from federal agencies vested with the right to sue and be sued the authority to be sued for the torts of any employee acting within the scope of employment of his office under circumstances where the United States, if a private person, would

Report and Recommendation accepted and

adopted. JSM/forton, OSDJ ~~1/7/11~~ 1/7/11